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HOUSE BILL 162

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO CHILD SUPPORT; LIMITING COLLECTIONS TO PRINCIPAL ONLY; AMENDING A SECTION OF THE PUBLIC ASSISTANCE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 27-2-27 NMSA 1978 (being Laws 1981, Chapter 90, Section 1, as amended) is amended to read:

"27-2-27. SINGLE STATE AGENCY--POWERS AND DUTIES. --

A. The department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV D of the federal act with the following duties and powers to:

(1) establish the paternity of a child in the case of the child born out of wedlock with respect to whom an assignment of support rights has been executed in favor of the department;

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 (2) establish an order of support for children
2 receiving [~~aid to families with dependent children~~] temporary
3 assistance for needy families and, at the option of the
4 department, for the spouse or former spouse with whom such
5 children are living, but only if a support obligation has been
6 established with respect to such spouse or former spouse, for
7 whom no order of support currently exists, and seek
8 modification, based upon the noncustodial parent's ability to
9 pay, of existing orders in which the support order is
10 inadequate to properly care for the child and the spouse or
11 former spouse with whom the child is living;

12 (3) enforce as the real party in interest any
13 existing order for the support of children who are receiving
14 [~~aid to families with dependent children~~] temporary assistance
15 for needy families or of the spouse or former spouse with whom
16 such children are living;

17 (4) provide services to non-aid families with
18 dependent children in the establishment and enforcement of
19 paternity and child support obligations, including locating the
20 absent parent. For these services, the department is
21 authorized to establish and collect fees, costs and charges
22 permitted or required by federal law or by regulations adopted
23 pursuant to that federal law; and

24 (5) adopt regulations for the disposition of
25 unclaimed child, spousal or medical support payments.

1 B. In all cases handled by the department pursuant
2 to the provisions of this section, the child support
3 enforcement division or an attorney employed by the division
4 represent the department, to the exclusion of any other party,
5 in establishing, modifying and enforcing support obligations.

6 C. An attorney employed to provide the Title IV D
7 services represents only the department's interests and no
8 attorney-client relationship shall exist between the attorney
9 and another party.

10 D. The department shall, at the time an application
11 for child support services is made, inform the applicant that
12 neither the Title IV D agency nor the attorney who provides
13 services under this section is the applicant's attorney and
14 that the attorney who provides services under this section
15 shall not provide legal representation to the applicant.

16 E. The department may initiate an action or may
17 intervene in an action involving child support.

18 F. The attorney employed by the department pursuant
19 to this section shall not act as a guardian ad litem for the
20 applicant.

21 G. A court shall not disqualify the department in a
22 legal action filed pursuant to the Support Enforcement Act of
23 the federal Social Security Act because the department has
24 previously provided services to a party whose interests are now
25 adverse to the relief requested.

underscored material = new
[bracketed material] = delete

1 H. The department shall not assess, calculate or
2 collect interest on child or spousal support obligations that
3 it is enforcing unless the department determines that the
4 circumstances warrant the assessment and collection of the
5 interest.

6 I. The child or spousal support obligee who is
7 receiving services from the department under this section shall
8 have the right to proceed against the child or spousal support
9 obligor by separate motion for all interest on the child
10 support or spousal support obligation pursuant to Section
11 40-4-7.3 NMSA 1978.

12 J. Approval by the child support obligee of any
13 judgment obtained by the department for principal only shall
14 not act as a waiver of the obligee's right to collect pre-and
15 post-judgment interest on the child or spousal support."